

**Introduced by Senator Runner**

February 18, 2009

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An act to amend Section 527.8 of the Code of Civil Procedure, relating to temporary restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 188, as introduced, Runner. Temporary restraining orders: schools.

Existing law authorizes any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, to seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, other employees, as specified.

This bill would modify the definition of employer for the purposes of that provision to include an educational site, such as a school, college, university, or technical institute. The bill would also change the definition of employee for the purposes of that provision to include students at those educational sites.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 527.8 of the Code of Civil Procedure is
- 2     amended to read:
- 3     527.8. (a) Any employer, whose employee has suffered
- 4     unlawful violence or a credible threat of violence from any
- 5     individual, that can reasonably be construed to be carried out or
- 6     to have been carried out at the workplace, may seek a temporary

1 restraining order and an injunction on behalf of the employee and,  
2 at the discretion of the court, any number of other employees at  
3 the workplace, and, if appropriate, other employees at other  
4 workplaces of the employer.

5 (b) For the purposes of this section:

6 (1) “Unlawful violence” ~~is~~ *means* any assault or battery, or  
7 stalking as prohibited in Section 646.9 of the Penal Code, but shall  
8 not include lawful acts of self-defense or defense of others.

9 (2) “Credible threat of violence” ~~is~~ *means* a knowing and willful  
10 statement or course of conduct that would place a reasonable person  
11 in fear for his or her safety, or the safety of his or her immediate  
12 family, and that serves no legitimate purpose.

13 (3) “Course of conduct” ~~is~~ *means* a pattern of conduct composed  
14 of a series of acts over a period of time, however short, evidencing  
15 a continuity of purpose, including following or stalking an  
16 employee to or from the place of work; entering the workplace;  
17 following an employee during hours of employment; making  
18 telephone calls to an employee; or sending correspondence to an  
19 employee by any means, including, but not limited to, the use of  
20 the public or private mails, interoffice mail, fax, or computer  
21 e-mail.

22 (4) “Employee” *means* persons defined in Section 350 of the  
23 Labor Code. “Employee” *also includes* the members of boards of  
24 directors of private, public, and quasi-public corporations and  
25 elected and appointed public officers. *For purposes of this section*  
26 *only “employee” also includes:*

27 (A) *A volunteer or independent contractor who performs services*  
28 *for the employer at the employer’s worksite.*

29 (B) *Students and staff at an educational site, such as a school,*  
30 *college, university, or technical institute.*

31 (5) “Employer” *means* persons defined in Section 350 of the  
32 Labor Code. “Employer” *also includes* the following:

33 (A) *A federal agency, the state, a state agency, a city, county,*  
34 *or district.*

35 (B) *A private, public, or quasi-public corporation, or any public*  
36 *agency thereof or therein.*

37 (C) *An educational site, such as a school, college, university,*  
38 *or technical institute.*

39 (c) This section does not permit a court to issue a temporary  
40 restraining order or injunction prohibiting speech or other activities

1 that are constitutionally protected, or otherwise protected by  
2 Section 527.3 or any other provision of law.

3 ~~(d) For purposes of this section, the terms “employer” and~~  
4 ~~“employee” mean persons defined in Section 350 of the Labor~~  
5 ~~Code. “Employer” also includes a federal agency, the state, a state~~  
6 ~~agency, a city, county, or district, and a private, public, or~~  
7 ~~quasi-public corporation, or any public agency thereof or therein.~~  
8 ~~“Employee” also includes the members of boards of directors of~~  
9 ~~private, public, and quasi-public corporations and elected and~~  
10 ~~appointed public officers. For purposes of this section only,~~  
11 ~~“employee” also includes a volunteer or independent contractor~~  
12 ~~who performs services for the employer at the employer’s worksite.~~

13 ~~(e)~~

14 *(d)* Upon filing a petition for an injunction under this section,  
15 the plaintiff may obtain a temporary restraining order in accordance  
16 with subdivision (a) of Section 527, if the plaintiff also files an  
17 affidavit that, to the satisfaction of the court, shows reasonable  
18 proof that an employee has suffered unlawful violence or a credible  
19 threat of violence by the defendant, and that great or irreparable  
20 harm would result to an employee. In the discretion of the court,  
21 and on a showing of good cause, a temporary restraining order or  
22 injunction issued under this section may include other named  
23 family or household members who reside with the employee, or  
24 other persons employed at his or her workplace or workplaces. A  
25 temporary restraining order granted under this section shall remain  
26 in effect, at the court’s discretion, for a period not to exceed 15  
27 days, unless otherwise modified or terminated by the court.

28 ~~(f)~~

29 *(e)* Within 15 days of the filing of the petition, a hearing shall  
30 be held on the petition for the injunction. The defendant may file  
31 a response that explains, excuses, justifies, or denies the alleged  
32 unlawful violence or credible threats of violence or may file a  
33 cross-complaint under this section. At the hearing, the judge shall  
34 receive any testimony that is relevant and may make an  
35 independent inquiry. Moreover, if the defendant is a current  
36 employee of the entity requesting the injunction, the judge shall  
37 receive evidence concerning the employer’s decision to retain,  
38 terminate, or otherwise discipline the defendant. If the judge finds  
39 by clear and convincing evidence that the defendant engaged in  
40 unlawful violence or made a credible threat of violence, an

1 injunction shall issue prohibiting further unlawful violence or  
2 threats of violence. An injunction issued pursuant to this section  
3 shall have a duration of not more than three years. At any time  
4 within the three months before the expiration of the injunction,  
5 the plaintiff may apply for a renewal of the injunction by filing a  
6 new petition for an injunction under this section.

7 ~~(g)~~

8 *(f)* This section does not preclude either party from  
9 representation by private counsel or from appearing on his or her  
10 own behalf.

11 ~~(h)~~

12 *(g)* Upon filing of a petition for an injunction under this section,  
13 the defendant shall be personally served with a copy of the petition,  
14 temporary restraining order, if any, and notice of hearing of the  
15 petition. Service shall be made at least five days before the hearing.  
16 The court may, for good cause, on motion of the plaintiff or on its  
17 own motion, shorten the time for service on the defendant.

18 ~~(i)~~

19 *(h)* (1) The court shall order the plaintiff or the attorney for the  
20 plaintiff to deliver a copy of each temporary restraining order or  
21 injunction, or modification or termination thereof, granted under  
22 this section, by the close of the business day on which the order  
23 was granted, to the law enforcement agencies within the court's  
24 discretion as are requested by the plaintiff. Each appropriate law  
25 enforcement agency shall make available information as to the  
26 existence and current status of these orders to law enforcement  
27 officers responding to the scene of reported unlawful violence or  
28 a credible threat of violence.

29 (2) At the request of the plaintiff, an order issued under this  
30 section shall be served on the defendant, regardless of whether the  
31 defendant has been taken into custody, by any law enforcement  
32 officer who is present at the scene of reported unlawful violence  
33 or a credible threat of violence involving the parties to the  
34 proceedings. The plaintiff shall provide the officer with an endorsed  
35 copy of the order and proof of service that the officer shall  
36 complete and send to the issuing court.

37 (3) Upon receiving information at the scene of an incident of  
38 unlawful violence or a credible threat of violence that a protective  
39 order has been issued under this section, or that a person who has  
40 been taken into custody is the subject of an order, if the plaintiff

1 or the protected person cannot produce an endorsed copy of the  
2 order, a law enforcement officer shall immediately attempt to  
3 verify the existence of the order.

4 (4) If the law enforcement officer determines that a protective  
5 order has been issued, but not served, the officer shall immediately  
6 notify the defendant of the terms of the order and obtain the  
7 defendant's address. The law enforcement officer shall at that time  
8 also enforce the order, but may not arrest or take the defendant  
9 into custody for acts in violation of the order that were committed  
10 prior to the verbal notice of the terms and conditions of the order.  
11 The law enforcement officer's verbal notice of the terms of the  
12 order shall constitute service of the order and constitutes sufficient  
13 notice for the purposes of this section and for the purposes of  
14 Section 273.6 and subdivision (g) of Section 12021 of the Penal  
15 Code. The plaintiff shall mail an endorsed copy of the order to the  
16 defendant's mailing address provided to the law enforcement  
17 officer within one business day of the reported incident of unlawful  
18 violence or a credible threat of violence at which a verbal notice  
19 of the terms of the order was provided by a law enforcement  
20 officer.

21 ~~(j)~~

22 (i) (1) A person subject to a protective order issued under this  
23 section shall not own, possess, purchase, receive, or attempt to  
24 purchase or receive a firearm while the protective order is in effect.

25 (2) The court shall order a person subject to a protective order  
26 issued under this section to relinquish any firearms he or she owns  
27 or possesses pursuant to Section 527.9.

28 (3) Every person who owns, possesses, purchases or receives,  
29 or attempts to purchase or receive a firearm while the protective  
30 order is in effect is punishable pursuant to subdivision (g) of  
31 Section 12021 of the Penal Code.

32 ~~(k)~~

33 (j) Any intentional disobedience of any temporary restraining  
34 order or injunction granted under this section is punishable pursuant  
35 to Section 273.6 of the Penal Code.

36 ~~(l)~~

37 (k) Nothing in this section may be construed as expanding,  
38 diminishing, altering, or modifying the duty, if any, of an employer  
39 to provide a safe workplace for employees and other persons.

40 ~~(m)~~

1 (l) The Judicial Council shall develop forms, instructions, and  
2 rules for scheduling of hearings and other procedures established  
3 pursuant to this section. The forms for the petition and response  
4 shall be simple and concise, and their use by parties in actions  
5 brought pursuant to this section shall be mandatory.

6 ~~(n)~~

7 (m) A temporary restraining order or injunction relating to  
8 harassment or domestic violence issued by a court pursuant to this  
9 section shall be issued on forms adopted by the Judicial Council  
10 of California and that have been approved by the Department of  
11 Justice pursuant to subdivision (i) of Section 6380 of the Family  
12 Code. However, the fact that an order issued by a court pursuant  
13 to this section was not issued on forms adopted by the Judicial  
14 Council and approved by the Department of Justice shall not, in  
15 and of itself, make the order unenforceable.

16 ~~(o)~~

17 (n) Information on any temporary restraining order or injunction  
18 relating to harassment or domestic violence issued by a court  
19 pursuant to this section shall be transmitted to the Department of  
20 Justice in accordance with subdivision (b) of Section 6380 of the  
21 Family Code.

22 ~~(p)~~

23 (o) There is no filing fee for a petition that alleges that a person  
24 has inflicted or threatened violence against an employee of the  
25 petitioner, or stalked the employee, or acted or spoken in any other  
26 manner that has placed the employee in reasonable fear of violence,  
27 and that seeks a protective or restraining order or injunction  
28 restraining stalking or future violence or threats of violence, in  
29 any action brought pursuant to this section. No fee shall be paid  
30 for a subpoena filed in connection with a petition alleging these  
31 acts. No fee shall be paid for filing a response to a petition alleging  
32 these acts.

33 ~~(q)~~

34 (p) (1) Subject to paragraph (4) of subdivision (b) of Section  
35 6103.2 of the Government Code, there shall be no fee for the  
36 service of process of a temporary restraining order or injunction  
37 to be issued pursuant to this section if either of the following  
38 conditions apply:

1 (A) The temporary restraining order or injunction issued  
2 pursuant to this section is based upon stalking, as prohibited by  
3 Section 646.9 of the Penal Code.

4 (B) The temporary restraining order or injunction issued  
5 pursuant to this section is based upon a credible threat of violence.

6 (2) The Judicial Council shall prepare and develop application  
7 forms for applicants who wish to avail themselves of the services  
8 described in this subdivision.

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